



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 17, 1995

Mr. Donald G. Vandiver
First Assistant City Attorney
City of Lubbock
P.O. Box 2000
Lubbock, Texas 79457

OR95-1255

Dear Mr. Vandiver:

You ask whether certain information is subject to required public disclosure pursuant to chapter 552 of the Government Code. Your request was assigned ID# 36340.

The City of Lubbock (the "city") received a request for copies of all documents in the possession of the police department that relate to closed internal investigation division files regarding seven named officers. You state that all of the requested information is located in the police officers' personnel files that the police department created pursuant to section 143.089(g) of the Local Government Code. You state that none of the information requested relates to a situation where disciplinary action was taken against any of the seven named officers and that none of the information was transferred to the personnel files maintained by the Civil Service Commission. You contend that, consequently, pursuant to section 143.089(g) of the Local Government Code, the requested information must be withheld in its entirety. You have submitted for our review the information at issue. Additionally, you inform us that, regarding one of the named officers, the city has expunged some of the information requested in compliance with a court order. You have enclosed for our review a copy of the court's order of expunction. Since the city has complied with the expunction order, and, consequently, no longer possesses any information related to the subject of the court order, the city is not required by chapter 552 of the Government Code to produce any information requested that would relate to the subject of the expunction order. *See* Open Records Decision No. 605 (1990) (governmental body has no duty to disclose information it does not possess).

Information contained in personnel files held by the civil service commission must be released unless the information comes within one of chapter 552's exceptions to required public disclosure. However, with regard to the personnel file information held internally by the police department, section 143.089(g) provides:

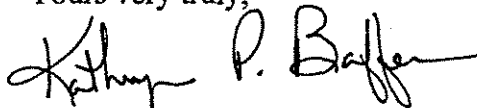
A fire or police department may maintain a personnel file on a fire fighter or police officer employed by the department for the department's use, *but the department may not release any information contained in the department file to any agency or person requesting information relating to a fire fighter or police officer.* The department shall refer to the director or the director's designee a person or agency that requests information that is maintained in the fire fighter's or police officer's personnel file.

Local Gov't Code § 143.089(g) (emphasis added); *see also City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946 (Tex. App.--Austin, 1993, writ denied) (information maintained pursuant to section 143.089(g) is confidential by statute). The department is required to refer any person who requests information maintained in the department's own internal personnel file to the civil service commission, which you state you have done by copy of the request letter to this office.

Most of the requested investigations resulted in no disciplinary action being taken against the police officer. However, material included with your request indicates that an allegation of misconduct was sustained. We agree that information contained only in the department's own personnel file must be withheld under section 143.089(g). *See also id.* § 143.1214 (department investigatory records pertaining to unsustained allegations of misconduct to be released only to another law enforcement agency or fire department). *See generally City of San Antonio v. Texas Attorney Gen.*, 851 S.W.2d 946 (Tex. App.--Austin 1993, writ denied). However, for the investigation that resulted in disciplinary action against the police officer, section 143.089(a)(2) requires that the department transfer "any letter, memorandum, or document relating to" the disciplinary action to the city civil service commission. These records may not be withheld under section 552.101 of the Government Code but must be released by the civil service commission under section 143.089(f) of the Local Government Code unless some provision of chapter 552 of the Government Code or other law permits the commission to withhold the documents. Open Records Decision No. 562 (1990); *see also* Local Gov't Code § 143.089(f).

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Kathryn P. Baffes". The signature is fluid and cursive, with the first name "Kathryn" being more prominent.

Kathryn P. Baffes
Assistant Attorney General
Open Records Division

KPB/rho

Ref: ID# 36340

Enclosures: Submitted documents

cc: Mr. Philip Wischkaemper
Snuggs & Wischkaemper
915 Texas Avenue
Lubbock, Texas 79401
(w/o enclosures)